IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2998 OF 2005

IN

SUIT NO.2461 OF 2005

...

Mukesh Lalchand Talrej & Anr. ...Plaintiffs

v/s.

Mrs.Mona Ashok Manial & Ors. ...Defendants

...

Mr.Utangale i/b Utangale & Co. for the Plaintiffs.

Mr.J.S.Kini i/b S.S.Dube for Defendants Nos.1 & 2.

...

CORAM: D.K.DESHMUKH, J.

DATED: 6TH JUNE, 2007

P.C.:

This notice of motion is taken out by the Plaintiffs. The Plaintiffs have filed this suit claiming decree

of specific performance of the agreement, copy of which is at Exh.A. That agreement is dated 28th October, 1998. According to the Plaintiffs, by that agreement the Defendants agreed to transfer a flat owned by them for consideration of Rs.2,50,000/-. According to the Plaintiffs, Rs.1,50,000/- were paid by pay order dated 20th October, 1998. According to the Plaintiffs, the Defendants placed the Plaintiffs in possession of the flat.

. The Plaintiffs by this Notice of Motion claim an interim order protecting possession of the Plaintiffs.

. According to the Defendants, there is no Memorandum of Understanding entered into between the Plaintiffs and the Defendants. According to the Defendants, the Plaintiffs are trespasser and have no rights to the flat.

. Though the Plaintiffs claim that the amount of Rs.1,50,000/- was paid by pay order, there is no document produced on record to show that this pay order was actually secured by the Plaintiffs from any bank. There is no document produced to show that

this pay order was actually encashed by the Defendants. The Plaintiffs then claims that additional amount of Rs.25,000/- was paid by cheque to the Defendants. But it is not even alleged that cheque was encashed by the Defendants. There is also no document produced to show that the cheque was encashed. The Plaintiffs claim that they are in possession of the property as prospective purchaser pursuant to the agreement dated 28th October, 1998. But the Plaintiffs have produced a letter at exh.B dated 24th August, 2005, which shows that the Plaintiffs were not in possession as prospective purchaser. Thus, it prima facie appears that the agreement of sale on which the Plaintiffs are relying is not a genuine document. The Plaintiffs, it appears, are in possession of the flat without any authority of law and therefore no order of protecting their possession can be made. Notice of Motion is disposed of.

...